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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DANIEL W. DANCER,

10 Plaintiff,

11 v.

12 JON JESKE,

13 Defendant.

No. C09-5153BHS/KLS

**REPORT AND RECOMMENDATION
NOTED FOR: February 5, 2010**

14 This civil rights action has been referred to the undersigned United States Magistrate
15 Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4.

16 It has been more than sixty days since the Court's latest mailings to Plaintiff were
17 returned and the Court does not have a current address for the Plaintiff. Therefore, the
18 undersigned recommends that the Court dismiss this action as Plaintiff appears to have
19 abandoned his case.
20

21 **DISCUSSION**

22 On April 24, 2009, the court granted Plaintiff's application for leave to proceed *in forma*
23 *pauperis* and filed his complaint. Dkts. 6 and 7, respectively. On the same day, the court denied
24 Plaintiff's motions for the appointment of counsel and for writ of mandamus. Dkts. 10 and 11.
25 On May 4, 2009, the court ordered Plaintiff to file an amended complaint. Dkt. 14. On May 12,
26 2009 and June 23, 2009, Plaintiff advised the court that he was in custody at the King County

1 Correctional Facility in Seattle. Dkts. 14 and 15. On June 26, 2009, the court extended
2 Plaintiff's time to respond to the order to show cause (Dkt. 17) and on July 6, 2009, Plaintiff
3 advised the court that he had not received any documents since April 24, 2009. Dkt. 18. At that
4 time, the clerk re-sent Dkt. Nos. 10, 11, 14 and 17 to Plaintiff at the King County Correctional
5 Facility. *Id.*

6
7 Plaintiff filed his First Amended Complaint on July 27, 2009 and the court ordered
8 service of the Amended Complaint. Dkts. 19 and 21.

9 On September 17, 2009, counsel for Defendant Jon Jeske filed a Notice of Death,
10 advising that Defendant Jeske had passed away on May 7, 2008 (Dkt. 24) and a Notice of
11 Withdrawal of Appearance. Dkt. 25. The Notices of Death and Withdrawal contain certificates
12 of service indicating that Plaintiff was served with the documents at "156 Bonnell Road, Randle,
13 Washington 98377." Dkts. 24 and 25.

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15 On October 1, 2009, the Court's Orders (Dkts. 6, 10 and 11) were returned as
16 undeliverable as addressed with the notation that the documents should be forwarded to: "156
17 Bonnell Road, Randle, Washington 98377." Dkt. 26. The Clerk resent the documents to
18 Plaintiff at the Randle address on October 5, 2009. *Id.* On October 13, 2009, that mailing was
19 returned as undeliverable with the notation "not deliverable as addressed/unable to forward."
20 Dkt. 27.

21 Plaintiff has not notified the Court of his current address.

22
23 Local Rule 41(b)(2) states:

24 A party proceeding pro se shall keep the court and opposing parties advised as to
25 his current address. If mail directed to a pro-se plaintiff by the clerk is returned
26 by the post office, and if such plaintiff fails to notify the court and opposing
parties within sixty days thereafter of his current address, the court may dismiss
the action without prejudice for failure to prosecute.

1 This action has existed more than sixty days without an address for the Plaintiff.
2 Dismissal without prejudice for failure to prosecute is appropriate.

3 In addition, Plaintiff filed no response within 90 days after service of the Notice of Death
4 filed on behalf of Defendant Jon Jeske, whom Plaintiff sued in his individual capacity. Fed. R.
5 Civ. P. 25(a).

6 Accordingly, the undersigned recommends **DISMISSAL WITHOUT PREJUDICE** for
7 failure to prosecute pursuant to Local Rule 41(b)(2).
8

9 **CONCLUSION**

10 The Court should dismiss this action without prejudice as Plaintiff has left no forwarding
11 address and appears to have abandoned the case.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
13 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
14 objections. *See also* Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those
15 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the
16 time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
17 **February 5, 2010**, as noted in the caption.
18

19 DATED this 11th day of January, 2010.
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22 Karen L. Strombom
23 United States Magistrate Judge
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